IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.547 OF 2006
WITH
WRIT PETITION NO.548 OF 2006

The Sangli Bank Ltd., ...Petitioner.

Versus

The Kulko Engineering Works Ltd., & Ors. ...Respondents.

Shri Sunil Shukla i/b M/s Shukla & Shukla for the Petitioner.

Shri R.S.Apte for the Respondent.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 20th FEBRUARY, 2006.

P.C. :

1. These petitions under Article 227 of the Constitution of India, are directed against the orders of the Executing Court. The Executing Court upon being satisfied that the respondents-borrowers/guarantors having satisfied a money decree passed in favour of the petitioner-Bank directed it to return the title deeds pertaining to immovable property which was subject matter of mortgage and the Suit.

2. The petitioner submits that against the decree of the trial Court they have preferred a First Appeal and the said First Appeal is admitted and pending in

this Court. It is for this reason that the title deeds should not be returned because they are the only security.

3. Shri Apte learned Counsel appearing for the respondents states that as of now the decreetal sum alongwith interest has been paid and the Bank cannot retain the title deeds with it.

4. I find no reason to interfere with the orders under challenge based as they are upon the satisfaction of the Executing Court.

5. However, interest of both sides would be protected if the petitioners return the title deeds subject to respondents' executing a undertaking in this Court to the following effect :

i. That the respondents would abide by the judgment and decree of this Court in the above First Appeal and in case the appellants therein succeed, the respondents would pay the sum as directed by this Court, subject to their legal rights.

ii. Such an undertaking be executed by each

of the respondents within a period of three weeks from today.

iii. Upon such undertakings being executed and filed in this Court and copies thereof served on the petitioner, the petitioner shall return the title deeds.

iv. On such title deeds being returned, the petitioners shall not be called upon to pay a sum of Rs.500/- per day as directed by the trial Court.

6. Petition disposed of. This order is passed because Shri Shukla appearing for the petitioner states that the title deeds are in the custody of the petitioner Bank.

(S.C.DHARMADHIKARI,J.)